



General Assembly

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Amendment

LCO No. 4192

HB0504304192SD0

Offered by:

SEN. MCDONALD, 27th Dist.

To: Subst. House Bill No. 5043

File No. 475

Cal. No. 440

"AN ACT CONCERNING THE PENALTY FOR ENTICING A MINOR."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Section 53a-193 of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2004*):

5 The following definitions are applicable to this section and sections
6 53a-194 to 53a-210, inclusive, and sections 504 to 506, inclusive, of this
7 act:

8 (1) Any material or performance is "obscene" if, (A) taken as a
9 whole, it predominantly appeals to the prurient interest, (B) it depicts
10 or describes in a patently offensive way a prohibited sexual act, and
11 (C) taken as a whole, it lacks serious literary, artistic, educational,
12 political or scientific value. Predominant appeal shall be judged with
13 reference to ordinary adults unless it appears from the character of the
14 material or performance or the circumstances of its dissemination to be

15 designed for some other specially susceptible audience. Whether a
16 material or performance is obscene shall be judged by ordinary adults
17 applying contemporary community standards. In applying
18 contemporary community standards, the state of Connecticut is
19 deemed to be the community.

20 (2) Material or a performance is "obscene as to minors" if it depicts a
21 prohibited sexual act and, taken as a whole, it is harmful to minors. For
22 purposes of this [subsection] subdivision: (A) "Minor" means any
23 person less than seventeen years old as used in section 53a-196 and less
24 than sixteen years old as used in sections 53a-196a [.] and 53a-196b,
25 [and 53a-196c] and (B) "harmful to minors" means that quality of any
26 description or representation, in whatever form, of a prohibited sexual
27 act, when (i) it predominantly appeals to the prurient, shameful or
28 morbid interest of minors, (ii) it is patently offensive to prevailing
29 standards in the adult community as a whole with respect to what is
30 suitable material for minors, and (iii) taken as a whole, it lacks serious
31 literary, artistic, educational, political or scientific value for minors.

32 (3) "Prohibited sexual act" means erotic fondling, nude performance,
33 sexual excitement, sado-masochistic abuse, masturbation or sexual
34 intercourse.

35 (4) "Nude performance" means the showing of the human male or
36 female genitals, pubic area or buttocks with less than a fully opaque
37 covering, or the showing of the female breast with less than a fully
38 opaque covering of any portion thereof below the top of the nipple, or
39 the depiction of covered male genitals in a discernibly turgid state in
40 any play, motion picture, dance or other exhibition performed before
41 an audience.

42 (5) "Erotic fondling" means touching a person's clothed or unclothed
43 genitals, pubic area, buttocks, or if such person is a female, breast.

44 (6) "Sexual excitement" means the condition of human male or
45 female genitals when in a state of sexual stimulation or arousal.

46 (7) "Sado-masochistic abuse" means flagellation or torture by or
47 upon a person clad in undergarments, a mask or bizarre costume, or
48 the condition of being fettered, bound or otherwise physically
49 restrained on the part of one so clothed.

50 (8) "Masturbation" means the real or simulated touching, rubbing or
51 otherwise stimulating a person's own clothed or unclothed genitals,
52 pubic area, buttocks, or, if the person is female, breast, either by
53 manual manipulation or with an artificial instrument.

54 (9) "Sexual intercourse" means intercourse, real or simulated,
55 whether genital-genital, oral-genital, anal-genital or oral-anal, whether
56 between persons of the same or opposite sex or between a human and
57 an animal, or with an artificial genital.

58 (10) "Material" means anything tangible which is capable of being
59 used or adapted to arouse prurient, shameful or morbid interest,
60 whether through the medium of reading, observation, sound or in any
61 other manner. Undeveloped photographs, molds, printing plates, and
62 the like, may be deemed obscene notwithstanding that processing or
63 other acts may be required to make the obscenity patent or to
64 disseminate it.

65 (11) "Performance" means any play, motion picture, dance or other
66 exhibition performed before an audience.

67 (12) "Promote" means to manufacture, issue, sell, give, provide,
68 lend, mail, deliver, transfer, transmit, publish, distribute, circulate,
69 disseminate, present, exhibit, advertise, produce, direct or participate
70 in.

71 (13) "Child pornography" means any [material involving a live
72 performance or photographic or other visual reproduction of a live
73 performance which depicts a minor in a prohibited sexual act] visual
74 depiction including any photograph, film, videotape, picture or
75 computer-generated image or picture, whether made or produced by
76 electronic, mechanical or other means, of sexually explicit conduct,

77 where the production of such visual depiction involves the use of a
78 person under sixteen years of age engaging in sexually explicit
79 conduct, provided whether the subject of a visual depiction was a
80 person under sixteen years of age at the time the visual depiction was
81 created is a question to be decided by the trier of fact.

82 (14) "Sexually explicit conduct" means actual or simulated (A)
83 sexual intercourse, including genital-genital, oral-genital, anal-genital
84 or oral-anal physical contact, whether between persons of the same or
85 opposite sex, or with an artificial genital, (B) bestiality, (C)
86 masturbation, (D) sadistic or masochistic abuse, or (E) lascivious
87 exhibition of the genitals or pubic area of any person.

88 (15) "Visual depiction" includes undeveloped film and videotape
89 and data, as defined in subdivision (8) of section 53a-250, that is
90 capable of conversion into a visual image and includes encrypted data.

91 Sec. 502. Section 53a-196c of the general statutes is repealed and the
92 following is substituted in lieu thereof (*Effective October 1, 2004*):

93 (a) A person is guilty of importing child pornography when, with
94 intent to promote child pornography, [he] such person knowingly
95 imports or causes to be imported into the state [any] three or more
96 visual depictions of child pornography of known content and
97 character.

98 [(b) Importation of two or more copies of any publication containing
99 child pornography shall be prima facie evidence that such publications
100 were imported with intent to promote child pornography.]

101 [(c)] (b) Importing child pornography is a class [C] B felony.

102 Sec. 503. Section 53a-196d of the general statutes is repealed and the
103 following is substituted in lieu thereof (*Effective October 1, 2004*):

104 (a) A person is guilty of possessing child pornography [when he] in
105 the first degree when such person knowingly possesses [child
106 pornography, as defined in subdivision (13) of section 53a-193.

107 Possession of a photographic or other visual reproduction of a nude
108 minor for a bona fide artistic, medical, scientific, educational, religious,
109 governmental or judicial purpose shall not be a violation of this
110 subsection] fifty or more visual depictions of child pornography.

111 (b) Possessing child pornography in the first degree is a class [D] B
112 felony.

113 Sec. 504. (NEW) (*Effective October 1, 2004*) (a) A person is guilty of
114 possessing child pornography in the second degree when such person
115 knowingly possesses twenty or more but fewer than fifty visual
116 depictions of child pornography.

117 (b) Possessing child pornography in the second degree is a class C
118 felony.

119 Sec. 505. (NEW) (*Effective October 1, 2004*) (a) A person is guilty of
120 possessing child pornography in the third degree when such person
121 knowingly possesses fewer than twenty visual depictions of child
122 pornography.

123 (b) Possessing child pornography in the third degree is a class D
124 felony.

125 Sec. 506. (NEW) (*Effective October 1, 2004*) In any prosecution for a
126 violation of section 53a-196d of the general statutes, as amended by
127 this act, or section 504 or 505 of this act, it shall be an affirmative
128 defense that (1) the defendant (A) possessed fewer than three visual
129 depictions of child pornography, and (B) promptly and in good faith,
130 and without retaining or allowing any person, other than a law
131 enforcement agency, to access any visual depiction or copy thereof,
132 took reasonable steps to destroy each such visual depiction or reported
133 the matter to a law enforcement agency and afforded that agency
134 access to each such visual depiction, or (2) the defendant possessed a
135 visual depiction of a nude person under sixteen years of age for a bona
136 fide artistic, medical, scientific, educational, religious, governmental or
137 judicial purpose.

138 Sec. 507. Subsection (e) of section 53a-29 of the general statutes is
139 repealed and the following is substituted in lieu thereof (*Effective*
140 *October 1, 2004*):

141 (e) The period of probation, unless terminated sooner as provided in
142 section 53a-32, shall be not less than ten years nor more than thirty-five
143 years for conviction of a violation of subdivision (2) of subsection (a) of
144 section 53-21, section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, [or] 53a-
145 72b, 53a-90a, as amended by this act, 53a-196b, as amended by this act,
146 53a-196c, as amended by this act, 53a-196d, as amended by this act, or
147 section 504 or 505 of this act.

148 Sec. 508. Subsection (c) of section 54-56e of the general statutes is
149 repealed and the following is substituted in lieu thereof (*Effective*
150 *October 1, 2004*):

151 (c) This section shall not be applicable: (1) To any person charged
152 with a class A felony, a class B felony, except a violation of section 53a-
153 122 that does not involve the use, attempted use or threatened use of
154 physical force against another person, or a violation of section 14-227a,
155 as amended, subdivision (2) of subsection (a) of section 53-21, section
156 53a-56b, 53a-60d, 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, [or]
157 53a-72b, 53a-90a, as amended by this act, or section 504 or 505 of this
158 act, (2) to any person charged with a crime or motor vehicle violation
159 who, as a result of the commission of such crime or motor vehicle
160 violation, causes the death of another person, (3) to any person accused
161 of a family violence crime as defined in section 46b-38a who (A) is
162 eligible for the pretrial family violence education program established
163 under section 46b-38c, as amended, or (B) has previously had the
164 pretrial family violence education program invoked in such person's
165 behalf, (4) to any person charged with a violation of section 21a-267 or
166 21a-279 who (A) is eligible for the pretrial drug education program
167 established under section 54-56i, or (B) has previously had the pretrial
168 drug education program invoked in such person's behalf, or (5) unless
169 good cause is shown, to any person charged with a class C felony.

170 Sec. 509. Subdivision (2) of section 54-250 of the general statutes is
171 repealed and the following is substituted in lieu thereof (*Effective*
172 *October 1, 2004*):

173 (2) "Criminal offense against a victim who is a minor" means (A) a
174 violation of subdivision (2) of section 53-21 of the general statutes in
175 effect prior to October 1, 2000, subdivision (2) of subsection (a) of
176 section 53-21, subdivision (2) of subsection (a) of section 53a-70,
177 subdivision (1), (4) or (8) of subsection (a) of section 53a-71,
178 subdivision (2) of subsection (a) of section 53a-72a, subdivision (2) of
179 subsection (a) of section 53a-86, subdivision (2) of subsection (a) of
180 section 53a-87, section 53a-90a, as amended by this act, 53a-196a,
181 53a-196b, 53a-196c, as amended by this act, [or] 53a-196d, as amended
182 by this act, or section 504 or 505 of this act, (B) a violation of section
183 53a-92, 53a-92a, 53a-94, 53a-94a, 53a-95, 53a-96 or 53a-186, provided
184 the court makes a finding that, at the time of the offense, the victim
185 was under eighteen years of age, (C) a violation of any of the offenses
186 specified in subparagraph (A) or (B) of this subdivision for which a
187 person is criminally liable under section 53a-8, 53a-48 or 53a-49, or (D)
188 a violation of any predecessor statute to any offense specified in
189 subparagraph (A), (B) or (C) of this subdivision the essential elements
190 of which are substantially the same as said offense.

191 Sec. 510. Subsection (c) of section 19a-343 of the general statutes, as
192 amended by section 4 of public act 03-231, is repealed and the
193 following is substituted in lieu thereof (*Effective October 1, 2004*):

194 (c) Three or more arrests, or the issuance of three or more arrest
195 warrants indicating a pattern of criminal activity and not isolated
196 incidents, for the following offenses shall constitute the basis for
197 bringing an action to abate a public nuisance:

198 (1) Prostitution under section 53a-82, 53a-83, 53a-86, 53a-87, 53a-88
199 or 53a-89.

200 (2) Promoting an obscene performance or obscene material under
201 section 53a-196 or 53a-196b, employing a minor in an obscene

202 performance under section 53a-196a, [or importing or possessing child
203 pornography under section 53a-196c or 53a-196d] importing child
204 pornography under section 53a-196c, as amended by this act,
205 possessing child pornography in the first degree under section 53a-
206 196d, as amended by this act, possessing child pornography in the
207 second degree under section 504 of this act or possessing child
208 pornography in the third degree under section 505 of this act.

209 (3) Transmission of gambling information under section 53-278b or
210 53-278d or maintaining of a gambling premises under section 53-278e.

211 (4) Offenses for the sale of controlled substances, possession of
212 controlled substances with intent to sell, or maintaining a drug factory
213 under section 21a-277, 21a-278 or 21a-278a or use of the property by
214 persons possessing controlled substances under section 21a-279.
215 Nothing in this section shall prevent the state from also proceeding
216 against property under section 21a-259 or 54-36h.

217 (5) Unauthorized sale of alcoholic liquor under section 30-74 or
218 disposing of liquor without a permit under section 30-77, as amended.

219 (6) Violations of the inciting injury to persons or property law under
220 section 53a-179a.

221 (7) Maintaining a motor vehicle chop shop under section 14-149a.

222 (8) Murder or manslaughter under section 53a-54a, 53a-54b, 53a-55,
223 53a-56 or 53a-56a.

224 (9) Assault under section 53a-59, 53a-59a, subdivision (1) of
225 subsection (a) of section 53a-60 or section 53a-60a.

226 (10) Sexual assault under section 53a-70 or 53a-70a.

227 (11) Fire safety violations under section 29-292, subsection (b) of
228 section 29-310, or section 29-315, as amended, 29-317, 29-320, 29-325,
229 29-329, 29-337, 29-349 or 29-357, as amended.

230 Sec. 511. (*Effective from passage*) (a) A task force is established to
231 study procedures under state and federal law for law enforcement
232 agencies in this state to access subscriber records and the contents of
233 electronic or wire communications maintained by providers of
234 electronic communication service or remote computing service, as
235 those terms are defined in 18 USC 2510 and 18 USC 2711, respectively.

236 (b) The task force shall be composed of the Commissioner of Public
237 Safety, the Chief State's Attorney, the Chief Public Defender, the Chief
238 Court Administrator, a representative of the Connecticut Police Chiefs
239 Association and the cochairpersons and ranking members of the joint
240 standing committees of the General Assembly having cognizance of
241 matters relating to the judiciary and public safety, or their designees.

242 (c) Such study shall include, but not be limited to, an examination of
243 (1) the method by which a law enforcement agency may require the
244 disclosure of such information by a provider, such as by service of a
245 search warrant, court order or administrative subpoena, (2) the
246 standard for the issuance of a court order or subpoena, (3) the
247 procedure for notifying a subscriber when the records of such
248 subscriber or the contents of communications made by such subscriber
249 are sought from a provider, (4) the procedure for a provider or a
250 subscriber to move to challenge a subpoena or court order, (5)
251 procedures to ensure that the privacy interests of subscribers in wire
252 and electronic communications are protected, and (6) remedies and
253 sanctions for the unauthorized access to or disclosure of subscriber
254 records or communications.

255 (d) The task force shall report its findings and recommendations,
256 including any recommendations for legislation, to the joint standing
257 committee on the judiciary not later than January 5, 2005, in
258 accordance with the provisions of section 11-4a of the general statutes.

259 Sec. 512. (NEW) (*Effective from passage*) The Commissioner of
260 Correction shall prohibit any person who has been convicted of a
261 crime that requires registration pursuant to chapter 969 of the general

262 statutes from having access to a computer while such person is in the
263 custody of the commissioner and confined in a correctional facility.

264 Sec. 513. (*Effective October 1, 2004*) Sections 53a-197 and 53a-198 of
265 the general statutes are repealed."